

Open Research Online

The Open University's repository of research publications
and other research outputs

50 years Arguing with Neighbours: The UK's Complex Relationship with the European Union

Book Section

How to cite:

Wesemann, Anne (2020). 50 years Arguing with Neighbours: The UK's Complex Relationship with the European Union. In: Claydon, Lisa; Derry, Caroline and Ajevski, Marjan eds. Law in Motion: 50 years of Legal Change. The Open University Law School, pp. 37–51.

For guidance on citations see [FAQs](#).

© 2020 Open University Law School



<https://creativecommons.org/licenses/by-nc-nd/4.0/>

Version: Version of Record

Link(s) to article on publisher's website:

<http://www.open.ac.uk/blogs/50YearsOfLaw/?p=210>

Copyright and Moral Rights for the articles on this site are retained by the individual authors and/or other copyright owners. For more information on Open Research Online's data [policy](#) on reuse of materials please consult the policies page.

oro.open.ac.uk

Chapter 3

50 years Arguing with Neighbours: The UK's Complex Relationship with the European Union

Anne Wesemann

Abstract

1969 determined the UK's fate as an European Union (EU) Member State. Finally, with the 'cock' who crowed 'NON' twice making way, the route was clear for the UK to join the then European Community. The UK became a Member State in 1973 but it was neither smooth sailing to get to that point nor has it been since. The early years of membership were marked by doubts over the nature of the developing communities and the role the UK would be playing in that development were it to leave or remain. This led to a first UK referendum in 1975 on membership which confirmed the UK government's decision to join. Forty-one years later, a second referendum decided the UK should leave and paved the way to a slow exit. In between lay numerous economic crisis and domestic as well as international political challenges.

As the last full year of UK EU Membership, 2019 marks an end to a struggling 'ever closer' relationship. This chapter will shed some light on the 50 years of struggle between the what is now the European Union and the UK. It will draw on historical, political, economic and legal perspectives in examining the relationship. It will present an overview of the humble beginnings of the EU and the UK's role in that, and the relationship's stormy youth, when the world faced a global economic crisis. This chapter will examine whether the UK was being led or was leading in key matters of EU policy and law; in doing so it will consider arguments around sovereignty, or rather what there was to gain back after 2019. Lastly, it will in its conclusions draw from the evidence of the past 50 years to imagine how the challenges of the past can be overcome to enable a functioning relationship in the 50 years ahead.

1. Introduction

"It is to re-create the European Family, or as much of it as we can, and provide it with a structure under which it can dwell in peace, in safety and in freedom. We must build a kind of United States of Europe.

In this way only will hundreds of millions of toilers be able to regain the simple joys and hopes which make life worth living."

Winston Churchill¹

Every analysis of political relationships needs to be set in its historic context to evaluate the impact of the relationship on the countries involved, and their legal systems, if it is to be of any value. Context matters and the context of the early foundations of the UK's relationship with

¹ Winston Churchill, 'Speech on a Council of Europe' (Zurich, 19 September 1946)
<<http://aei.pitt.edu/id/eprint/14362>> accessed 03 October 2020.

the European Union (EU) is war in Europe.² Not just any war, a world war, the second in the same century, causing death, suffering, poverty and economic crisis amongst other evils.

Churchill's plea, made in Zurich, is to be seen in that context. The 'United States of Europe' he envisaged would counteract the perceived threat from the Eastern communist Union, and provide stability to the continent. His vision aimed to prevent central European nations falling into what seemed to be established routines of warmongery for a third time in the same century, or indeed ever again.³ Unification of Europe was meant to "make it plain that any war [...] becomes not merely unthinkable, but materially impossible."⁴

While Churchill is on the list of European pioneers, his relationship with continental Europe, and his understanding of the UK's role within Europe as a whole, was not that of a wholehearted Europhile.⁵ Just 16 years before his Zurich address, and therefore before the war, Churchill saw the UK "with Europe, but not of it".⁶ The Second World War had clearly shifted Churchill's thinking, and with that he becomes a suitable symbol for the complexities that were to define the relationship between the UK and the EU.

The UK consciously decided not to become part of the founding communities, seeing itself as one of the Allies and therefore untouched by the rationale of any form of unification within Europe. When it later on was keen to join the 'ever closer Union', it was blocked from doing so, because of the communities unanimity rules - directly by de Gaulle's adamant "Non!".⁷ While some argue the UK 'missing the boat' of membership at the founding stage caused unsurmountable friction between the EU to be and the UK, others are convinced that the two parties are too dissimilar, thus a relationship of any form was bound to fail eventually.⁸

This paper will explore the turbulent journey of the UK and EU as neighbours, partners and divorcees. In doing so, it will discuss different approaches to the analysis of this relationship in historic, political, economic and legal discourses. Some of these will complement each other, others will be in direct conflict. The chapter will demonstrate, how domestic challenges in the UK always impacted the way the country viewed its place in a European union, but also how its self-centredness led to self-fulfilling crisis. This paper will offer a view with regards to the UK's leadership role within the EU and show how long lasting the political impact of UK membership will be on the bigger union's structure and form. In its conclusions, the paper will consider what a fully functioning future relationship between the UK and the EU would need to acknowledge and overcome, discussing whether there may be a role the UK cannot escape in Europe and the world, whether it will like it or not.

² The complex relationship between Great Britain, Ireland & Northern Ireland cannot be given justice within the limitations of this paper. As the EU membership included Northern Ireland and other parts of the UK, reference throughout this chapter will be made to the UK, although citations will use the country reference as made by the author.

³ Winston Churchill; 'Speech on a Council of Europe'.

⁴ Robert Schuman, 'The Schuman Declaration' (9 May 1950) <https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en> accessed 21 September 2020.

⁵ A list of European pioneers can be found on one of the official EU websites <https://europa.eu/european-union/about-eu/history/eu-pioneers_en> accessed 03 October 2020; Discussing some of the pioneers and their motives critically is Alan S. Wilward, *The European Rescue of the Nation-State* (Routledge 1992) 333 – 363.

⁶ Will Morrissey, *Churchill and de Gaulle The Geopolitics of Liberty* (Rowman & Littlefield 2015) 96.

⁷ Wilward, *The European Rescue of the Nation-State* 338.

⁸ Among others: Anthony Nutting, *Europe Will Not Wait: A Warning and a Way Out* (Hollis & Carter 1960) 103; Elisabeth Barker, *Britain in a Divided Europe, 1945 – 1970* (Weidenfeld & Nicolson 1971); James Allison, 'The European Rescue of Britain' in Fernando Guiaro, Frances M.B. Lynch and Sigfrido M. Ramirez Perez, Alan S. Milward and a Century of European Change, (Routledge 2012) 511; Ann Lyon, *Constitutional History of the UK* (Cavendish Publishing Limited 2003) 415 f; Mark Baimbridge, Philip B. Whyman & Brian Burkitt, *Moored to the Continent? Future Options for Britain and the EU* (Andrews UK Limited 2012) 23.

2. Humble Beginnings

“The pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the federation of Europe, and will change the destinies of those regions which have long been devoted to the manufacture of munitions of war, of which they have been the most constant victims.”

*Robert Schumann*⁹

Schumann very clearly outlined the focus of the community that was about to be built in the centre of Europe. The creation of the European Coal and Steel Community united the economic interests of France, West Germany, Italy, the Netherlands, Belgium and Luxembourg; and in doing so set the tone for other communities. There was a real pressure to achieve nothing less than “the realization of the first concrete foundation of a European federation indispensable to the preservation of peace.”¹⁰

The UK sat comfortably outside this project, viewing itself as a world power that had guided and supported peace in Europe. It showed no appetite to join any form of formal community;¹¹ to be fair, there was “a whole raft of Europes” to choose from at this point.¹² Unique to its European neighbours, the UK saw its interests as firmly aligned with its Commonwealth, in which Britain continued to view itself as the central power, benefiting substantially economically and politically from these well-established relations.¹³ As the six European nations under the Treaty of Rome continued to prosper as the European Economic Community (EEC), outpacing the UK’s economic growth of the late 1950s, the UK slowly started to reconsider its position, eventually driving the founding of the European Free Trade Association (EFTA) as an attempt to even up disparities in growth with its neighbours.¹⁴ This enabled free movement of goods between the UK, the EFTA members (Denmark, Norway, Sweden, Austria, Switzerland and Portugal) as well as the EEC, but this did not stimulate the UK domestic economy sufficiently to emulate the growth created within the EEC.

The UK started to seriously consider joining the six, leading some to argue that this decision was based solely on economic considerations.¹⁵ Crowson suggests the picture was somewhat more complex, however, and involved political considerations as well. One particular influence was the ‘special’, yet ever changing, relationship between the USA and the UK, and another the UK’s persistent fear of a diminishing “diplomatic clout” in Europe.¹⁶ Saunders quotes the Chancellor of the Exchequer, Derick Heathcoat-Amory noting in 1960 that “entry was ‘a political act with economic consequences’, rather than the reverse.”¹⁷ Some argue that the Suez crisis was a particular catalyst for the UK’s change of mind regarding membership, as

⁹ Schumann, ‘The Schuman Declaration’.

¹⁰ *ibid.*

¹¹ Lyon, *Constitutional History of the UK* 415.

¹² N.J. Crowson, *Britain and Europe – A Political History Since 1918* (Routledge 2011) 1.

¹³ Lyon, *Constitutional History of the UK* 415; Alan S. Milward, *The Rise and Fall of a National Strategy 1945 – 1963, The UK and The European Community, Vol. I* (Whitehall History Publishing 2002) 188; Frances M.B. Lynch and Fernando Guiaro, ‘A Lifetime’s Search for a Theory of Historical Change, Introduction to the Work of Alan S. Milward’ in Guiaro, Lynch and Perez, *Alan S. Milward and a Century of European Change* 118 ff; Crowson, *Britain and Europe* 79.

¹⁴ Lyon, *Constitutional History of the UK* 415.

¹⁵ Anne Deighton, ‘The Labour Party, Public Opinion and the ‘Second Try’ in 1967’ in Oliver J. Daddow, *Harold Wilson and European Integration, Britain’s Second Application to join the EEC* (Routledge 2016) 40; Crowson, *Britain and Europe* 80.

¹⁶ Crowson, *ibid* 13.

¹⁷ Robert Saunders, *Yes to Europe! The 1975 Referendum and Seventies Britain*, (Cambridge University Press 2018) 46.

the crisis led to insecurity over the role of Britain in the world.¹⁸ Historians continue to argue about, whether it was the threat of an overpowering Soviet Union, the disappointment following Suez, or the thriving economies of the six, that caused the UK to look differently at its potential relationship with them. Crowson, however, summarises the UK's motivation neatly, in reference to Milward, providing an oversimplification: The UK had to prevent the fading of its global influence by all means necessary.¹⁹

It took the UK three attempts to join the EEC. It is no coincidence that the UK's application succeeded the same year that Charles de Gaulle, French President till 1969, resigned.²⁰ Until then, the previous two applications fell victim to the Communities unanimity rule as France vetoed UK membership.²¹ The British Prime Minister, Harold Macmillan, saw the French President as "the cock on a small dunghill" concerned about the power shift likely to occur with the UK's accession.²² The reference to the dunghill is to the comments of a French Agriculture Minister who summarised the rationale for the French opposition as: "Mais il y aura deux coqs. Alors ce n'est pas aussi agréable [But where you have two cockerels that would not be at all agreeable!]"²³ Anecdotes like this serve as evidence that it was not just the views of the Macmillan government at play, but an inheritance of personal preference and the history of past conflicts that influenced decision making in the infantile united Europe.²⁴

The UK's accession to the EU was finally completed in 1973, but there was some reluctance expressed by politicians and some members of the UK public. Two years later, in 1975, it was felt advisable to hold the UK's first referendum on EU membership. There is much scholarship on the domestic politics at play at the time, seemingly viewing the Labour government and Harold Wilson as significant contributors to the EEC accession success.²⁵ However, the two main political parties were very divided on the 'issue of Europe' throughout the 1960s and 70s. They have remained so ever since. The announcement of the 2016 referendum and its aftermath if anything deepened the division in public opinion within the UK, but this difference of public opinion was not a reflection of political party allegiances.²⁶

So far, the focus of the chapter has been on how politicians dealt with the question of accession and closer ties with the UK's mainland neighbours. The UK public was given a very selective and specific version of what the UK's new partnership would mean for them from the late 50's onwards. It was promised that membership "would bring higher standards of living, though it was admitted that food prices would rise because of the ending of cheap imports from the Commonwealth under preferential tariffs, and Britain would be required to make large

¹⁸ Among others: Ralph Dietl, 'Suez 1956: A European Intervention?' (2008) 43 *Journal of Contemporary History* 259; Crowson, *Britain and Europe* 73; Tore T. Petersen, 'Suez 1956, European Colonial Interests and US Cold War Prerogatives' in Daniel Möckli and Victor Mauer (eds), *European – American Relations and the Middle East, From Suez to Iraq* (Routledge 2011) 11; Peter J. Beck "The Less Said about Suez the Better": British Governments and the Politics of Suez's History, 1956 – 67' (2009) CXXIV (508) *The English Historical Review* 605; G. C. Peden 'Suez and Britain's Decline as a World Power' (2012) 55(4) *The Historical Journal* 1073; Pnina Lahav 'The Suez Crisis of 1956 and its Aftermath: A Comparative Study of Constitutions, Use of Force, Diplomacy and International Relations' (2015) 95 *Boston University Law Review* 1297.

¹⁹ Crowson, *Britain and Europe* 73.

²⁰ Lyon, *Constitutional History of the UK* 417.

²¹ Stephen Wall, *The Official History of Britain and the European Community: From Rejection to Referendum, 1963 – 1975* (Routledge 2013) 7.

²² *ibid*, in reference to Charles de Gaulle's opposition to UK membership and an anecdote of an exchange involving Prime Minister Harold Macmillan.

²³ *ibid*; On the complexity of the UK-French relationship with a focus on Churchill and de Gaulle's also see: Morrissey, *Churchill and de Gaulle The Geopolitics of Liberty* 327 ff.

²⁴ Morrissey, *Churchill and de Gaulle The Geopolitics of Liberty* analyses the complex history of Churchill and de Gaulle's through the lenses of their personal experiences and background.

²⁵ Lyon, *Constitutional History of the UK* 417.

²⁶ Crowson, *Britain and Europe* 91; Anne Applebaum, 'A Transformed Political Landscape' (2017) 28 *Journal of Democracy* 53, 54 f; Sara B. Hobolt, 'The Brexit Vote: a Divided Nation, a Divided Continent' (2016) 23 *Journal of European Public Policy* 1259, 1260; Saunders, *Yes to Europe!* 57 f, 61 f; Hugo Young, *This Blessed Plot, Britain and Europe from Churchill to Blair*, (Macmillan 1999) 270 f.

contributions to the central EEC budget.”²⁷ There was no discussion of how EU law had already evolved, through a series of decisions of the European Court of Justice mainly, into a directly applicable source of law within the Member States, equal, if not supreme to the domestic law. The UK public was unconvinced regardless, but “the House of Commons [voted] to approve the terms negotiated and for the government to be given the necessary authority to enter into a Treaty of Accession by 356 votes to 244 in October 1971,” paving the way to accession.²⁸ The public was left with their expectations of improved living standards and promise of a thriving economy, mixed with a profound understatement of the complexities of community law at the time and a lack of understanding for the background and context. This set the tone for the continuing disconnect between the UK’s actual relation to the later EU and the public perception of the same within the UK.²⁹

3. Stormy Youth

*“The story of ‘Britain and Europe’ has often seemed better suited to the psychiatrist than the historian.”*³⁰

The 1970s were a challenging decade for the UK, arguably with or without EEC membership, and arguably because of its disconnection from the Commonwealth. The EEC partners were facing a comparable “economic slump” coinciding with the UK’s accession.³¹ In the UK inflation was high, so was unemployment and the measures introduced by governments to counter both lead to “a wave of union militancy which made [the measures] completely ineffective”.³² The “conflict and class war in industry, a sharp downturn in the economy, a flight to extremism in political life, and a rise in public and domestic violence” were exacerbated instead.³³

While some view this as early evidence of an unrealistic overvaluing of the economic boost any cross-European partnership would ever be able to give, the UK’s situation in the 70’s really represents one of many symptoms following a shock to the world economy as a whole.³⁴ The EEC was in no position to cushion the blow for its members.

The 1975 referendum was proposed at a politically challenging point in the UK’s history, considering the turmoil of economic crisis significantly impacting the UK’s societal structures at home and abroad. It had been mooted by politicians on several occasions and continued to be mooted after the UK finally succeeded and completed its accession.³⁵ The approaching accession accelerated the public debate in the UK and calls for a referendum grew louder in the early 70’s. It was argued that where a general election cannot test consent of the public, a referendum was the only alternative “for voters to intervene”.³⁶ Saunders summarises three streams of thought presenting a referendum as a necessity:³⁷ First, the UK’s constitutional and political framework would be subject to fundamental change with EEC membership. Second, Members of Parliament, borrowing sovereignty from the electorate for their time in parliament, “were exceeding their powers by voting for membership”. Third, a referendum was a potential

²⁷ Lyon, *Constitutional History of the UK* 417 – 418.

²⁸ *ibid.*

²⁹ Matthew Watson, ‘Brexit, the Left Behind and the Let Down: The Political Abstraction of ‘the Economy’ and the UK’s EU Referendum’ (2018) 13 *British Politics* 17; Hobolt, ‘The Brexit Vote’.

³⁰ Saunders, *Yes to Europe!* 31.

³¹ *ibid* 83.

³² Lyon, *Constitutional History of the UK* 420.

³³ Kenneth O. Morgan ‘Britain in the Seventies – Our Unfinest Hour?’ (2017) XXII- Hors série|2017, *Revue Française de Civilisation Britannique* <<http://journals.openedition.org/rfcb/1662>> para 3 accessed 09 October 2020.

³⁴ Baimbridge, Whyman & Burkitt, *Moored to the Continent?* 47; Lyon, *Constitutional History of the UK* 422; Mel Watkins, ‘Seventies: From Boom to Economic Crisis’ (1997) 15 *Compass: A Jesuit Journal* 6.

³⁵ Saunders, *Yes to Europe!* 67 ff.

³⁶ *ibid* 68 – 69 ff.

³⁷ *ibid* 70 ff.

saviour, reinvigorating British democracy, which saw a decline in general election participation also reflecting badly on the results of the two main parties.³⁸

Harold Wilson during his first term as Prime Minister strongly resisted calls for a referendum. He felt that referenda were contrary to UK tradition, undemocratic tools of despots in support of Nazism and Fascism.³⁹ He was thus making a constitutional argument focussing on the UK only and not one in relation to the EEC. Ironically, in his second term, it was Wilson who had to lead the preparations for the 1975 referendum. Labour's "change of persona between government and opposition" created an ambiguous stance on the issue of EEC membership. The Conservative government's efforts in relation to the UK – EU relationship under Prime Minister Edward Heath could not be supported by Labour for domestic political reasons alone.⁴⁰ Supporting the idea of a referendum supported Labour's elections campaign in 1974, which also promised negotiations of terms with the EEC.⁴¹ Agreeing and holding this referendum "constituted a threefold revolution", Wilson's change of heart being one.⁴² Added to that was a fundamental change to the "practice of the British constitution" together with an overturning of "the most basic assumptions of British political thought".⁴³ Saunders sees this as evidence of "the disruptive potential of the European question and its capacity to rewrite the constitutional practice of member states", a fitting summary also when referring to the sister referendum in 2016.⁴⁴

Promises to re-negotiate the terms of membership with the EEC in preparation for a referendum formed part of the UK's election campaign in 1974, particularly on the side of the Labour party.⁴⁵ While what was eventually achieved was approved by the House of Commons, the government remained split on whether these new terms were sufficient or whether "continued EEC membership [was] not only [...] economically disadvantageous, but as damaging to national sovereignty".⁴⁶

A deciding argument for the referendum was the view that if "people are not to participate in this decision, no one will ever take participation seriously again."⁴⁷ Lyon even argues that the referendum came too late for the public: "Membership had not brought the economic advantages claimed, but there was a sense that there was no going back to the pre-1973 position—too many markets had been lost and relations with the Commonwealth were irreparably damaged."⁴⁸ Contrary to Lyon's claim public opinion continued to shift in favour of membership with 31 % thinking UK membership of the European Community was a good thing in September 1973, increasing to 47 % in May 1975.⁴⁹ As the referendum happened, two thirds of the public voted in favour of membership with a turnout of around 64 %.⁵⁰

This was meant to settle the question of membership for the UK once and for all, and the referendum was used as reference point whenever the question of another public vote was

³⁸ *ibid* 69 – 72.

³⁹ *ibid* 64.

⁴⁰ Young, *This Blessed Plot* 271, 275.

⁴¹ Vaughne Miller, 'The 1974-75 UK Renegotiation of EEC Membership and Referendum' (13 July 2015) Briefing Paper Number 7253 House of Commons Library 5 ff <<https://researchbriefings.files.parliament.uk/documents/CBP-7253/CBP-7253.pdf>> accessed 26 October 2020.

⁴² Robert Saunders, *Yes to Europe!* 65.

⁴³ *ibid*.

⁴⁴ *ibid*.

⁴⁵ Lyon, *Constitutional History of the UK* 421.

⁴⁶ *ibid* 422.

⁴⁷ Young, *This Blessed Plot* 275, citing Tony Benn.

⁴⁸ *ibid*

⁴⁹ Miller, 'The 1974-75 UK Renegotiation of EEC Membership and Referendum' 19.

⁵⁰ *Ibid* 25; Lyon, *Constitutional History of the UK* 421

raised in the face of increasing EC power.⁵¹ Indeed, it would take forty years for a referendum on the same topic to feature in an election campaign again.⁵²

4. Leading and Being Led

*“Heavy Fog in the Channel. Continent Cut Off”*⁵³

During the 2016 EU referendum campaign it was continuously claimed, that the UK would be subjected to EU policy and law without real influence or ‘say’.⁵⁴ A particularly striking claim for those UK representatives at work in the EU institutions as they were, at least indirectly, called purposeless.⁵⁵ The claim also stands in direct contrast to the UK’s successful position as EU Member State and yet outside the common currency and Schengen area, both of these being obligatory for candidate countries wanting to join the EU now.⁵⁶

Are there simply two sides to the UK’s story? The one when in Brussels, or Strasbourg for that matter, where UK diplomacy carried weight, the well-respected senior civil servants working closely with their European counterparts, influencing EU policy through the institutions right into the heart of other Member States.⁵⁷ Then the other, at home, where appetite for an ‘ever closer Union’ is as big as that for tea gone cold and where it feels impossible to prove how successful UK representatives are in persuasion and policy making in the UK’s interest.⁵⁸ Arguably, this summary overlooks the differences of opinion within the UK’s own political sphere and societal spectrum. The historically pro-European London would likely take changes in policy and law driven by Brussels better than the English north or Wales, in comparison.⁵⁹

There is also the issue not only of perspective but of approach. If a relationship is mainly viewed through an analysis of costs and benefit, the result may be quantifiable, but is it accurate?⁶⁰ Any analysis of “achievement and failure” in the UK’s policy approaches in the EU “cannot be presented in the form of a simple balance-sheet”.⁶¹ Relying on analysis of Council voting, Member State governments were in opposition in only 2% of votes between 1999 and 2011, counting over 2500 votes.⁶² This can hardly be read as the UK government being mostly outvoted.

⁵¹ Lyon, *ibid* 422.

⁵² David Cameron, ‘EU Speech at Bloomberg’ (2013) <<https://www.gov.uk/government/speeches/eu-speech-at-bloomberg>> accessed 09 October 2020.

⁵³ Maja Kluger Rasmussen, ‘Heavy Fog in the Channel. Continent Cut Off? British Diplomatic Relations in Brussels after 2010’ (2016) 54 *Journal of Common Market Studies* 709, 709.

⁵⁴ ‘The Battle of Evermore, The Referendum Campaign’ *The Economist* (London, 16 June 2016) 24.

⁵⁵ Richard Corbett, former Member of the European Parliament for the UK in a Labour seat, was among the ones most outspoken, setting up his own ‘myth busting’ page <<https://www.richardcorbett.org.uk/category/mythbusters/>> accessed 10 October 2020.

⁵⁶ Robin Niblett, ‘Britain, the EU and the Sovereignty Myth’ (2016) *Research Paper Europe Programme*, May 2016, The Royal Institute of International Affairs, Chatham House; Anand Menon and John-Paul Salter, ‘Britain’s Influence in the EU’ (2020) 236 *National Institute Economic Review* 7; Sara Hagemann, Sara B. Hobolt and Christopher Wratil, ‘Government Responsiveness in the European Union: Evidence from Council Voting’ (2017) 50 *Comparative Political Studies* 850.

⁵⁷ One example being the UK veto to the Fiscal Compact, discussed by Rasmussen, ‘Heavy Fog in the Channel. Continent Cut Off?’ 709 – 710.

⁵⁸ Dragging to the surface the tension between London and Brussels and the diplomacy at work was Lionel Barber, ‘The Men Who Run Europe’ *Financial Times* (London, 11 March 1995) 32.

⁵⁹ YouGov The Times survey on EU referendum voting intention published 18 May 2016 available online <<https://yougov.co.uk/topics/politics/articles-reports/2016/05/18/eu-referendum-remain-lead-four>> accessed 26 October 2020.

⁶⁰ Heavily focussing on such approach are Baimbridge, Whyman & Burkitt, *Moored to the Continent?* 46 ff; Offering an alternative are Menon and Salter ‘Britain’s Influence in the EU’.

⁶¹ Barker, *Britain in a Divided Europe, 1945 – 1970* 291.

⁶² Hagemann, Hobolt and Wratil, ‘Government Responsiveness in the European Union’.

The reality is yet again more complex, as political persona and contrary international and domestic interests come into play. When comparing reports of the UK's engagements with the EU with domestic announcements reporting on the same, the UK representatives duplicity is all too visible.⁶³ This behaviour is as old as the UK's membership, Thatcher being a prominent example who, "as she took Britain further in [the EU], she stoked the fire of those who opposed this every step of the way."⁶⁴ While all of "her political energy was directed against it", Thatcher played an active part in a transforming Union, one of the significant achievements at time being the abandonment of the unanimous vote in the Council.⁶⁵ While 'inveighing' "about the relentless advance of the EU and the restrictions placed on [the UKs] own pursuit of a free market economic as a cure for all domestic evils" Thatcher's actions supported the increase of powers on the then EC side.⁶⁶

The developments ahead of the Maastricht Treaty being ratified in 1993 serve as another example of UK hesitance leading to different versions of membership, seemingly for the UK's benefit and under new leadership of Prime Minister John Major. Whilst the UK fundamentally objected to the idea of a federal Europe from the outset, the other member nations aimed to create a federal Europe in the new treaty.⁶⁷ Federalism for the UK resembled the constitutional arrangements of the USA, Canada or Australia and the UK was strongly opposed to the idea.⁶⁸ The UK did not want to be party to such a relationship but equally was not able to propose an alternative. The solution for the UK was simple and one that would be the UK approach throughout the rest of its membership: the opt out. The UK insisted that Maastricht Treaty did not refer to the creation of a federal Europe explicitly, though the treaty envisaged developing the European Union ever closer with cooperation moving beyond a purely economic focus.⁶⁹

The UK's 'one foot in – one foot out' approach seemed to rely on its diplomatic prestige, which wore thin eventually, as the following example will show. Partners were left feeling like too many favours had been called in and to little benefit was gained in return. One painful example is the UK's short-lived participation in the Exchange Rate Mechanism (ERM) leading to Black Wednesday, effectively preventing the UK from joining the European Monetary Union (EMU).⁷⁰ While this impacted the UK's and European Communities alike, Lyon provides insight into the domestic tensions behind the UK's joining of the ERM, sharing how Prime Minister "Thatcher reacted angrily" at the prospect of "accelerated plans for further monetary integration" shortly after having just joined the ERM with reluctance.⁷¹ Senior ministers openly pointed out how the UK's economic struggles were precisely because of the hesitancy to get involved in the first place.⁷² Aykens, while comparing the reactions to struggles in Italy and Germany at the same time, shows how "there was so little real sympathy for the British after all these years of the kind of tack they had taken. They were on their own".⁷³ Stephens concludes "when the crisis hit in 1992 Britain had no real allies".⁷⁴

⁶³ One example used by Alex Barker relates to Cameron in 2011: "Cameron later said he had 'exercised my veto' on treaty change, but he never actually used those words in the room. The rest of the EU agreed to do a side deal without him, breaking with the convention that the European Council moved as one" in Alex Barker, 'Goodbye Brussels: What I Learnt in Eight Years Covering the EU' *Financial Times Magazine Online* (London, 29 August 2019) <<https://www.ft.com/content/1955d464-c926-11e9-af46-b09e8bfe60c0>> accessed 10 October 2020.

⁶⁴ Young, *This Blessed Plot* 306.

⁶⁵ Ibid.

⁶⁶ Lyon, *Constitutional History of the UK* 422.

⁶⁷ Ibid 424.

⁶⁸ Ibid 423.

⁶⁹ Ibid 424.

⁷⁰ Ibid; Peter Aykens, 'Conflicting Authorities: States, Currency Markets and the ERM Crisis of 1992–93' (2002) 28 *Review of International Studies* 359.

⁷¹ Lyon, *Constitutional History of the UK* 423 - 424.

⁷² Ibid.

⁷³ Aykens, 'Conflicting Authorities' 374.

⁷⁴ Philip Stevens, *Politics and the Pound: The Tories, the Economy and Europe* (Macmillan 1996) 260.

Reputation and diplomatic gravitas are never static, but it is evident how the UK's drive around Europe with the brakes on was exhausting its partners on multiple occasions.⁷⁵ The negotiation rounds before and since the referendum 2016 serve as another exemplar, where the UK often overestimated its own influence and was not reading the room, if indeed anybody was there to be read.⁷⁶ Those working on the ground in Brussels, not politicians focussing on short term goals for party and individual, but civil servants interested in a functioning relationship, were the true heroes of UK diplomacy in the EU, managing carefully the balancing act between whoever was in No 10 and the Brussels machinery.⁷⁷ It is a UK tradition after all, that politicians are not, as one might expect at the forefront of policy making but "rather less gets pushed up to the top" and "much policy is made without having to intrude".⁷⁸ In that it stands almost directly opposite to the EU which, despite all the claims to be "bureaucrat's paradise" most fundamental decisions are left to government representatives in Council.⁷⁹

While it suits the UK to argue that it lacks influence on the EU level, it is its self-centred back and forth approach that in the end serves as self-fulfilling prophecy when the EU relations disappoint.

5. Falling Out with Neighbours

"No. No. No."

*Prime Minister Margaret Thatcher*⁸⁰

Neither of the main UK political parties ever managed to be wholeheartedly convinced that the UK's future would lie within the European Union and not outside, despite "demand for British leadership of a united Europe".⁸¹ In that they truly represent the divide in the electorate and wider public which since at least the early 1990s "remains critical of the EU" always showing sympathy for the option of withdrawal.⁸² Baimbridge et al ask provocatively: "Why does Britain not appear to share the vision of the other member states? Why does the UK so often resist common policies? Why is it that it always seems to be Britain that wants special treatment? Why in spite of its size and international influence is the British government perceived as trying to block or dilute the impact of initiatives from Brussels?"⁸³ When discussing these questions Baimbridge et al do not provide comprehensive answers but manage to touch upon a series of challenges showing that, rather than the UK suddenly falling out with the more passionate Europeans they have also been the rather awkward self-conscious neighbours, eagerly eyeing the blooming roses but with real aversion to any attempt of tackling the thorns. What Baimbridge et al are overlooking are the UK's internal constitutional and political differences in structure and opinion. Just as it is impossible to claim one party represents one particular view on the UK – EU relationship, we cannot claim that Westminster politicians speak for the

⁷⁵ Rasmussen analyses what happens when the 'Council Club Rules' are broken in Rasmussen, 'Heavy Fog in the Channel. Continent Cut Off?', 711 f.

⁷⁶ The picture of PM May waiting alone in a conference room was a striking symbol for the UK's isolated position: Daniel Boffey, 'Excluded, Isolated, Humiliated: a History of May's Visits to Brussels' *The Guardian* (London, 30 June 2019) <<https://www.theguardian.com/politics/2019/jun/30/excluded-isolated-humiliated-history-theresa-may-visits-brussels>> accessed 11 October 2020.s

⁷⁷ Barber, *The Men Who Run Europe*.

⁷⁸ Edward C. Page, *Policy without Politicians: Bureaucratic Influence in Comparative Perspective* (Oxford University Press 2013) 47 ff.

⁷⁹ *ibid* 123 – 124; Andrew Moravcsik, 'Despotism in Brussels: Misreading the European Union' (2001) *May/June Foreign Affairs* 114.

⁸⁰ Hansard HC Deb 30 October 1990 column 869 <<https://publications.parliament.uk/pa/cm198990/cmhansrd/1990-10-30/Debate-1.html>> accessed 11 October 2020.

⁸¹ Nutting, *Europe Will Not Wait: A Warning and a Way Out* 4.

⁸² Baimbridge, Whyman & Burkitt, *Moored to the Continent?* 46.

⁸³ *ibid* 35.

public view across the country or indeed for the devolved governments in Scotland, Wales and Northern Ireland.

While the 2016 referendum on membership seems to suggest that the most successful claims made by the Leave campaign were those relating to immigration, it is the argument of loss of sovereignty that is as old as the UK – EU relationship.⁸⁴ This does not mean to say that immigration was not a hot topic influencing the UK's view of the EU and its predecessor communities. After all Enoch Powell's infamous Rivers of Blood speech in 1968 coincided with preparations of the UK's accession to the EEC.⁸⁵ However, the issue of perceived immigration versus actual immigration and the complex societal concerns arising for future generations, the Windrush generation being one particular example, provide enough ground for a whole other discourse. Here, the issue of immigration as raised by the referendum campaign, is one feeding into the fear of a weakened UK sovereignty.

Lyon argues "had Britain chosen to join the EEC at its inception, it would have been in a strong position to dictate the form of the organisation and the detailed terms of the Treaty of Rome, and to deal expressly with issues relating to sovereignty which have caused so much difficulty since."⁸⁶ The two entities would have been able to adjust their constitutional settings from the outset, growing together more through subtle reforms than seemingly forced means such as direct effect. Arguably, the lack of a referendum on the UK's accession was another historic misjudgement, showing underestimation of the public's fear of 'foreign rule' and 'loss of sovereignty', consciously put into them during the Second World War.⁸⁷ Baimbridge et al argue that "the notion of an unbroken history", "the lack of invasion, absence of revolution and being an 'old' state in a 'new' world" are all part of the UK's identity.⁸⁸ They go on to explore how "the legacy of empire and the pretence of global influence" are used as explanations for the UK's "non-alignment with the rest of Europe."⁸⁹ Lastly, the "development of a distinctive legal system", very different "compared to other EU nations" will always require the UK "to make major adjustments" in comparison to its neighbours.⁹⁰ This goes beyond "the adversarial system of justice" being "alien to the European inquisitorial tradition" but to a continental European comfort in "general enabling legislation", whereas the UK "relies on common law".⁹¹ The way Baimbridge et al pull on the UK's unique identity has its appeal, but does not fully explain why the UK deserves to be treated favourably in its inward looking approach to pan European cooperation, compared to other nations. After all, every member state arguably surrendered some of its identity to be reborn as part of a Union of states.

More crucially perhaps, Baimbridge et al argue that "the contrasting legal systems" also present "different rights of citizenship".⁹² While "citizens' rights are granted and safeguarded by the state because it is enshrined in a constitutional document " in most continental European countries, in the UK "by contrast, it has been assumed that individuals have the right to do whatever they choose provided law does not explicitly prohibit it."⁹³ Whether the

⁸⁴ Lyon, *Constitutional History of the UK* 417; Matthew Goodwin and Caitlin Milazzo, 'Taking Back Control? Investigating the Role of Immigration in the 2016 Vote for Brexit,' (2017) 19 *British Journal of Politics & International Relations* 450; Matthew Goodwin and Oliver Heath, 'The 2016 Referendum, Brexit and the Left Behind: An Aggregate-level Analysis of the Result' (2016) 87 *The Political Quarterly* 323; Jon Stratton, 'The Language of Leaving: Brexit, the Second World War and Cultural Trauma' (2019) 23 *Journal for Cultural Research* 225.

⁸⁵ Michael Savage, 'Fifty Years on, What is the Legacy of Enoch Powell's "Rivers of Blood" Speech?' *The Guardian* (London, 15 April 2018) <<https://www.theguardian.com/world/2018/apr/14/enoch-powell-rivers-blood-legacy-wolverhampton>> accessed 3 November 2020.

⁸⁶ Lyon, *Constitutional History of the UK* 417.

⁸⁷ *ibid.*

⁸⁸ Baimbridge, Whyman & Burkitt, *Moored to the Continent?* 35.

⁸⁹ *ibid.* 36.

⁹⁰ *ibid.* 37.

⁹¹ *ibid.*

⁹² *Ibid.* 38.

⁹³ *ibid.* 38.

UK's public really has this conscious self-perception is impossible to tell, the issue of citizenship, however, became a prominent topic in the aftermath of the referendum and subsequent withdrawal procedures where significant numbers of public representatives made it known that they had no intention to surrender their EU citizenship lightly.⁹⁴

It is convincing that many, if not all, of the factors above, significantly define the “unique interrelationship” between the UK and the EU and as such arguably always set any attempt of an ever closer Union between both up to fail.⁹⁵

6. Friends with Benefits

“As we leave the European Union, we will forge a bold new positive role for ourselves in the world”.

*Prime Minister Theresa May*⁹⁶

While the 2009 Lisbon Treaty was received with mixed reviews, particularly after its older sister treaty failed the ratification in domestic parliaments, it served to lay the question of withdrawal from the EU to rest by introducing Article 50 TEU.⁹⁷

The question of EU membership was not openly questioned then but the history of the UK – EU relationship, in hindsight, seems to have inevitably led to break-up ten years after Article 50 was introduced. Like every relationship that ended, one can retrospectively argue: ‘It was not meant to be! More kept them apart than united them’.⁹⁸ Indeed, Baimbridge et al argue the case for a solitary journey for the UK in Europe, not isolated but linked to the EU where it suits the fundamentally different economic systems.⁹⁹ Arguably, these fundamental differences go beyond economics to the core of the two political, legal and societal systems.¹⁰⁰

This is also reflected in the way the UK and the EU have approached the former's departure. The process of withdrawal was promised to be complex and difficult and most observers were still surprised by just how painful it seems.¹⁰¹ The UK is on its third Prime Minister since the result of the 2016 referendum and while Prime Minister Johnson ‘got Brexit done’, the future

⁹⁴ Verena K Brändle, Charlotte Galpin, and Hans-Jörg Trenz, ‘Marching for Europe? Enacting European Citizenship as Justice during Brexit’ (2018) 22 *Citizenship Studies* 810, 816.

⁹⁵ Baimbridge, Whyman & Burkitt, *Moored to the Continent?* 23.

⁹⁶ Theresa May's first statement as Prime Minister delivered 13 July 2016 outside Downing Street No 10 printed in Andrew Burner, Nancy E.M. Bailey and Credo Reference, *50 Speeches That Made the Modern World* (Enhanced Credo 2017).

⁹⁷ Lyon asked the question whether lawful withdrawal would ever be possible in 2003 Lyon, *Constitutional History of the UK* 419; Finn Laursen, *The Rise and Fall of the EU's Constitutional Treaty* (Martinus Nijhoff Publishers 2008).

⁹⁸ Saunders, *Yes to Europe!* 31.

⁹⁹ Baimbridge, Whyman & Burkitt, *Moored to the Continent?* 111 ff.

¹⁰⁰ Not to mention the multitude of systems within the intergovernmental structures of the EU and its Member states.

¹⁰¹ Even just triggering the withdrawal process under Article 50/51 TEU and in accordance with the UK constitution was subject to legal challenge: *Miller & Anor, R (on the application of) v Secretary of State for Exiting the European Union* (Rev 3) [2017] UKSC 5; also among others the contributions in the edited collection by Ahmed and Fahey provide an overview of the impact of withdrawal in Tawhida Ahmed and Elaine Fahey, *On Brexit* (Edward Elgar Publishing 2019); Within that a contribution discussing the impact of the UK's withdrawal on Ireland and Northern Ireland and the implications for the Good Friday agreement by Luke McDonagh, ‘The Constitutional Implications of Brexit’; See also Karl August Prinz von Sachsen Gessaphe, Juan J. Garcia Blesa and Nils Szuka, *Legal Implications of Brexit* (MV Wissenschaft 2018).

relationship of the two divorcees remains unclear. At the time of writing EU law will cease to apply in the UK in under ten weeks' time and benefits of these laws will dry up¹⁰²

Prime Minister Cameron wanted to negotiate a 'better deal' for the UK with the EU before the referendum in 2016 but did not convince enough to further a remain vote in the referendum.¹⁰³ May spent her term as Prime Minister negotiating the non-negotiable behind closed glass doors and triggered the UK's withdrawal process from the EU under Article 50 TEU.¹⁰⁴ Prime Minister Johnson got a version of Brexit done and has spent the transition period in 2020 treading water responding to a global pandemic and managing demands in the negotiation of a new relationship with the EU.¹⁰⁵

Promising the oxymoron of 'having the cake and eating it' became habit in UK politics since the referendum vote and stands as symbol for the UK's self-imposed but impossible balancing act: The electorate needs to be calmed and appeased on the one side, while uncharted territory of negotiation and then future relationship with the EU awaits on the other.¹⁰⁶ It does not help that public opinion on the EU remains diverse within UK opinion polls, making it impossible for any government to feel confident in their policy making and governance.¹⁰⁷ It is striking how little in this process is certain. The Department for Exiting the European Union, specifically formed under May's government, lost eight ministers in under three years, showing how well the diverse public opinion is also represented in politics.¹⁰⁸ The UK's internal conflicts regarding constitutional, political or economic priorities in negotiations of the withdrawal process, and now in relation to a future agreement, are hindering its own success. It cannot go in one direction if its parts are heading separate ways.¹⁰⁹ The referendum vote in Scotland and Northern Ireland differs significantly from that in Wales and England, making it impossible for the UK government to follow one clear political agenda. The UK is continuously forced to engage with painful core questions of its own constitutional identity and legal framework as well as economic structures, hiding the struggles behind claims others are hindering UK progress and preventing this great nation from prospering.¹¹⁰ The UK has not outgrown this version of self-centredness, despite realisations that proactive approaches can be to its benefit, and therefore continues to bring challenges upon itself through self-fulfilling prophecies.

¹⁰² Boris Johnson in the second reading of the European Union (Withdrawal Agreement) Bill repeats his campaign mantra "to get Brexit done": Hansard HC Deb 20 December 2019 vol 669 col 146.

¹⁰³ Eva-Maria Poptcheva and David Eatock, *The UK's 'New Settlement' in the European Union* (2016) European Parliament.

¹⁰⁴ Marlen Heide and Ben Worthy, 'Secrecy and Leadership: The Case of Theresa May's Brexit Negotiations.' (2019) 21 *Public Integrity: Ethical Leadership and the Integrity of Public Institutions* 582.

¹⁰⁵ Arno Hantzsche and Gary Young, 'The Economic Impact of Prime Minister Johnson's New Brexit Deal.' (2020) 250 *National Institute Economic Review* F34.

¹⁰⁶ Andreas Musolff, 'Having Cake and Eating It: How a Hyperbolic Metaphor Framed Brexit' (*LSE Brexit Blog*, 12 February 2020) <<https://blogs.lse.ac.uk/brexit/2020/02/13/having-cake-and-eating-it-how-a-hyperbolic-metaphor-framed-brexit/>> accessed 12 October 2020.

¹⁰⁷ Deltapoll for Mail on Sunday 28 September 2020 available online <<http://www.deltapoll.co.uk/polls/latest-voting-intention-25th-september>> accessed 26 October 2020.

¹⁰⁸ Robert Merrick, 'Chris Heaton-Harris: Brexit Minister Resigns in Protest at Theresa May Extending Article 50' *The Independent* (London, 03 April 2019) <<https://www.independent.co.uk/news/uk/politics/chris-heaton-harris-resigns-brexit-minister-may-delay-article-50-corbryn-a8853126.html>> accessed 12 October 2020.

¹⁰⁹ Among others: Edwin Parks and Carol Howells, 'The Repatriation of Exclusive Competences From EU in Post-Brexit United Kingdom' in Karl August Prinz von Sachsen Gessaphe, Juan J. Garcia Blesa and Nils Szuka *Legal Implications of Brexit* Hagener Rechtswissenschaftliche Schriften 2 (MV-WISSENSCHAFT 2018).

¹¹⁰ Boris Johnson, 'Prime Minister Address to the Nation (31 January 2020)' <<https://www.gov.uk/government/speeches/pm-address-to-the-nation-31-january-2020>> accessed 12 October 2020. The challenges around devolution are one area where the UK government has been remarkably reluctant to engage. More strikingly, the issues around the Irish border have only been engaged with when forced so. An urgent question in the House of Commons by Louise Haigh seeking confirmation for "the UK's commitment to its legal obligations under the Northern Ireland protocol" serves as an example Hansard HC 08 September 2020 Vol 679 Col 497.

In the end “perceptible rise in Euroscepticism” and the “public disenchantment with the EU” are the result of political mismanagement more than economic, political or legal truths.¹¹¹ Without really understanding how its own internal conflicts impact on any future relationship with the EU, the UK attempts to further new relations. In doing so it is looking to receive the same benefits without any of the obligations it evaded to sell to the public domestically in the first place. It seems to have learned half a lesson, in that it is not seeking to hide these obligations from its people. Rather than addressing the fact that an agreement reached between the EU and the UK will of course need to benefit both sides, the UK continues to seek the impossible: An international agreement benefitting itself, while forcing obligations only on the EU. The present back and forth between UK and EU could continue ad infinitum, if it were not for economic crisis and general elections to intervene.

7. The year 2070

“The UK's commitment to Europe cannot be measured simply by its relationship with the EEC.”¹¹²

Maybe Churchill was right back in 1930 when he proclaimed the UK was “with Europe but not of it.”¹¹³ Throughout its history, the UK considered itself unconcerned by the crises that shook the continent, unless they came knocking on their door. They had to cross the channel first, after all.

The UK had mastered being a global conquer, grew an empire and still mourns its loss in many respects. This Union of European States was simply not falling for the UK's grandeur and it could have all been such a wonderful ‘European Commonwealth’ under UK leadership.¹¹⁴ The UK is an extraordinary partner when a crisis does not directly concern them, providing support at arm's length, or leadership from the top, depending on the perspective taken. It does, however, get complicated when it is asked to give something for when it takes, not out of malice, but habit.

This chapter has shown how the starting points of the founding EC member states and the UK differ so dramatically; they could hardly have been further away from one another. Those joining the founding European Coal and Steel community did not choose to do so for the greater good; there was no common market to benefit from, no sovereignty to lose, no constitutional tradition challenged. The continent literally lay in ruins, was governed by the Allies and it was clear who were the bigger and the smaller spoons at the table, as the new borders were drawn. In order to prevent nations ever choosing the option of conflict over the option of cooperation, they had to be connected where it hurt them most in a crisis: their wallets. Creating interdependencies would intertwine the fate of these nations, never to be separated again.

The stabilising effect to these economies through cooperation was what the UK was really interested in, so long as it fitted the UK's ‘gentleman approach’.¹¹⁵ It did not want to be forced but prided itself in being forceful. Thatcher's confrontational method's won small victories and “cashed in a lot of chips, in a game where every player has only a limited number and can't

¹¹¹ Baimbridge, Whyman & Burkitt, *Moored to the Continent?* 34-35.

¹¹² Saunders, *Yes to Europe!* 33.

¹¹³ Morrissey, *Churchill and de Gaulle The Geopolitics of Liberty* 96.

¹¹⁴ Mourning the lack of UK leadership in Europe: Anthony Nutting, *Europe Will Not Wait: A Warning and a Way Out* (Hollis & Carter 1960) 103; Saunders even refers to the accession of the UK to the then EC as the new British empire in Saunders, *Yes to Europe!* 254.

¹¹⁵ Young, *This Blessed Plot* 330 f.

acquire more by simply shouting.¹¹⁶ It is a record, “not of triumph, but [bewilderment]” as it seemed impossible for the UK to “truly accept that its modern destiny was to be a European country.”¹¹⁷ Saunders therefore concludes that the UK “features less as a rational actor on the world stage than as a trauma victim, strapped to the analyst's couch.”¹¹⁸

There is evidence that nothing much has changed since those founding years. May's “discursive construction of Brexit” is said to have contributed to “political paralysis”.¹¹⁹ The jury is still out on Johnson, while he continues applying comparable rhetoric.¹²⁰ It seems “differences in history, culture and political traditions” are insurmountable and will continue to make “for ill at ease bedfellows.”¹²¹

The UK's “unbroken history” and “legacy of empire” cannot be overcome by political compromise of sorts.¹²² Politics is short-lived compared to world history and while the idiom promises it will repeat itself we only ever really know with the benefit of hindsight whether it truly has. It is easy to blame the UK for its self-centredness, but the same needs to be said for the EU. Fortress Europe cannot afford to surrender its identity of unity and complex diplomacy in the face of member state self-interests either, or it will risk their smaller entities bit by bit chipping away until the fundamental core, the single market and its four freedoms, is a meaningless shell.¹²³

Stalemate.

Arguably, but there is no reason why a reboot would be indefensible. Neither UK nor EU can escape their individual contexts but can ground their future relationship in a clearly defined and carefully chosen unique setting belonging to them only. Joining the early European Communities would have allowed the UK to shape the EU in a way that would have suited itself, there is no doubt. That does not mean, however, that a newly founded co-operation cannot grow into a firm and stable co-operation in which both parties prosper. In a way, the withdrawal process laid bare many of the hidden constitutional, political and societal challenges. Now in the open, these can be addressed directly and purposefully.

Any future co-operation needs to acknowledge the other parties starting point, if it wants to ever be a serious and valuable endeavour. The UK needs to fully accept that the single market cannot be undermined through any attempt of ‘cherry picking’; It either is committed to full access including all its advantages and constraints, or it accepts it will have to pay extra for the privilege of limited access and limited risk.¹²⁴ The EU on the other hand has to understand the UK's constitutional and political framework has not grown and matured through forced revolution, war and reform but is the result of centuries of slow reactionary change in common law with its identity firmly rooted in parliamentary sovereignty.¹²⁵ It is therefore not as amenable to EU law mechanisms such as regulations and ECJ case law as the legal frameworks of the

¹¹⁶ *ibid* 325.

¹¹⁷ *ibid* 1.

¹¹⁸ Saunders, *Yes to Europe!* 31.

¹¹⁹ Monika Brusenbauch Meislova, ‘Brexit Means Brexit—or Does It? The Legacy of Theresa May's Discursive Treatment of Brexit’ (2019) 90 *The Political Quarterly* 681, 682.

¹²⁰ YouGov ratings show a 40% approval rate compared to 39% negative opinion in polls conducted between July and October 2020: <https://yougov.co.uk/topics/politics/explore/public_figure/Boris_Johnson> accessed 12 October 2020.

¹²¹ Baimbridge, Whyman & Brian Burkitt, *Moored to the Continent?* 166.

¹²² *ibid*.

¹²³ Colin Egan and Peter McKiernan, *Inside Fortress Europe: Strategies of the Single Market* (1994) EIU series Economist Intelligence Unit; Brian T. Hanson, ‘What Happened to Fortress Europe?: External Trade Policy Liberalization in the European Union’ (1998) 52 *International Organization* 55.

¹²⁴ Stefan Tangermann, ‘Brexit and Cherry Picking: Who's Afraid of the Big Bad Wolf?’ (2018) 17 *EuroChoices* 47.

¹²⁵ Michael Gordon, ‘Parliamentary Sovereignty and the Political Constitution(s): From Griffith to Brexit’ (2019) 30 *King's Law Journal* 125.

founding member states. The EU has created unique legal mechanisms in its founding years and there is no reason why a new partnership with the UK would not lead to the same.

This new fundamental understanding on both sides is essential to then appropriately contextualise the negotiations as the new relationship is defined and structured. The UK has to stop looking for versions of existing deals, longing for a Swiss approach yesterday only to be discussing a confusing version of Canada + + the next.¹²⁶ The EU has to overcome its internal diplomatic slow motion and the urge to fit agreements in a pre-set box to ensure approval in all member states. The seemingly impossible task of a compromise that leaves every participant thinking they have won needs to be abandoned for the benefit of a compromise that leaves all feeling they have not been short-changed.

The EU was founded in the aftermath of the second world war and took decades to develop into its current format, through a mix of gentle diplomacy in the establishment of intergovernmental structures or sledgehammer decisions by the Court of Justice of the European Union. It is challenged by environmental threats, refugee movements and global events such as struggling economies facing a pandemic. Judging by the previous 50 years, the EU is likely to push for more cooperation closer to its citizenry. This approach can suit a UK that honestly seeks a demos governed Union, applying powerful representation and therefore delivering strongly legitimised legal mechanisms.

The UK on the other hand is priding itself in its uninterrupted history and Brexit is pulling at the seams of the Union between England, Wales, Scotland and Northern Ireland. 50 years from now, we may well see a united Ireland, an independent Scotland and an empowered Wales, leaving England to maybe consider the establishment of its own assembly.¹²⁷ The UK's history shows, however, that fundamental change is rare and subtle reforms over time more likely. The way the UK will be able to engage with the EU will depend enormously on its internal structures and the distraction these pose.

While the pandemic challenges our globalised approach to economies, politics and citizenry, the interconnectivities and dependencies have only become more visible. As some of these have grown slowly as part of the UK's EU membership, it remains to be seen how much of this almost organic development the UK chooses to explicitly reject as it develops the post-EU version of itself. As the global challenges remain, it is likely that as EU and UK respond to these a renewed cooperation feeds into the formation of a new version of EU – UK relations.

The UK and the EU can grow to become effective partners, furthering economic integration without intense constitutional intervention, so long as they accept how far the other party is willing to go. Then maybe, as the EU undergoes its long overdue reforms with the UK watching from the outside, and while the UK tests the cold water of globalised economies without the backing of an empire, both sides will realise that context matters, but can be overcome for a agreed version of a greater good. It may take another 50 years; let's put a holder in our diaries for 2069 and see.

¹²⁶ Paul Whiteley, 'Is Britain Heading for Canada Plus Plus Brexit?' (*The Conversation*, 13 December 2018) <<https://theconversation.com/is-britain-heading-for-canada-plus-plus-brexit-108782>> accessed 12 October 2020.

¹²⁷ Nicola McEwen, 'Negotiating Brexit: Power Dynamics in British Intergovernmental Relations' (2020) *Regional Studies* 1; Gerard McCann & Paul Hainsworth, 'Brexit and Northern Ireland: The 2016 Referendum on the United Kingdom's Membership of the European Union' (2017) 32 *Irish Political Studies* 327; John Temple Lang, 'Brexit and Ireland' (*European Parliament*, 13 December 2017) <<https://op.europa.eu/en/publication-detail/-/publication/4acca516-d651-11e7-a506-01aa75ed71a1/language-en>> accessed 3 November 2020; Andreas Rahmatian, 'Brexit and Scotland: Centralism, Federalism or Independence?' (2018) 26 *European Review* 616.